
(2016) 09 DEL CK 0033

In the Delhi High Court

Case No : W.P.(C)No. 7773 of 2002 and CM No. 6038 of 2011

Ajay Kumar Gulati

APPELLANT

Vs

State Bank of Bikaner & Jaipur

RESPONDENT

Date of Decision : 01-09-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 3 CLR 674 : (2016) LabLR 1133

Hon'ble Judges : Mr. Najmi Waziri, J.

Bench : Single Bench

Advocate : Mr. Ajay Kumar Gulati, in person, for the Petitioner; Mr. Rajiv Kapur, Advocate, for the Respondents

Final Decision : Disposed Off

Judgement

Mr. Najmi Waziri, J.—It is the petitioner's case that he was removed from service with the respondent bank by an order dated 26.07.2002 where he was working as clerk since 1979. On 15.11.1990, an audit was carried out at the Amar Colony Branch of the bank and irregularities were detected regarding grant of loans and overdrafts etc. Proceedings were not initiated against any officer except for two clerks including the petitioner and the Branch Manager, who was subsequently dismissed from service. It is the petitioner's case that he was lowest in the hierarchy of persons working in the bank. The Branch Manager was heading the Bank and he was assisted by other officers such as, the Assistant Manager and the Field Officer.

2. The petitioner further submits that he did not and could not have had any role in the sanctioning of any loan or over-draft; that since he was a clerk, he could at best, have moved files from one desk to the other and had no role in the financial decision making process. The petitioner contends that he himself did not file any of the documents because the loans which were sanctioned, were of third parties who were relatives or acquaintances of other staff members of the said branch. The petitioner submits that vide order dated 19.11.2010 in the CBI Case

No.18/2008, spanning over two decades, he has finally been discharged of any wrong doing. He was not found guilty of forging any document apropos the charges levelled against him. He submits that insofar as no document was ever filed or submitted by him towards sanction of any loan, he could not have been held guilty of any wrong doing as he was never part of the decision making process for sanction of either loan or over-draft.

3. He further submits that Rule 19.6(e) of Bipartite Settlement (in short the "settlement") dated 19.10.1966 on the basis of which he was discharged was not available to the disciplinary authority because the said settlement though signed in 1966 was made effective apropos banks only on 10.04.2002; that his discharge under Rule 19.6(e) of the Settlement, effective from 10.04.2002, is an erroneous application of the said provision, that the said Rule only provides for the punishment of the guilty employee by bringing down his/her scale upto a maximum of two stages but it does not provide for dismissal or discharge from service; that although the impugned order cites the misconduct, yet it discharges him under the aforesaid Rule.

4. Mr. Rajiv Kapur, the learned counsel for the respondents, submits that citing the wrong Rule would not take away the substance of the order, because the other Rule permitted the action taken by the respondent. Therefore, the impugned order ought to be read as discharge under Rule 19.6(d) of the Settlement. The learned counsel for the respondent raises an issue of maintainability of the writ petition on the ground that the petitioner, who was a clerk in the respondent bank, would be a workman and, therefore, his remedy would lie under the Industrial Disputes Act, 1947 (in short the I.D. Act). He submits that the petitioner never held a managerial position.

5. The petitioner submits that this issue of maintainability is raised for the first time after a lapse of 14 years. He refers to order of the Division Bench dated 06.09.1995 passed in WP(C) No. 405/1995, passed in the petitioner's case itself, which held inter alia:

"..... This writ petition can be disposed of at this stage as now the only question addressed before us is as to from what stage of the proceedings, the de novo enquiry should commence. A new enquiry officer has been appointed vide impugned order and impugned order has ordered de novo enquiry which, according to our view, was not justified. The reason given for holding the enquiry is that petitioner's grievance that he had not been given proper opportunity for defending his case by leading documentary and oral evidence has been accepted by the Department ad for affording reasonable opportunity of hearing to the petitioner for giving him full defence, de novo enquiry has been ordered.

We are of the view that the enquiry should be from the very beginning. The Department's evidence has already been completed and some evidence of the petitioner has also been recorded. The new Enquiry Officer should now proceed to give opportunity to the petitioner to produce his documentary and oral

evidence and also consider the question of refilling any witness for further cross-examination by the petitioner and then proceed to decide the matter afresh.

The petitioner be given his dues according to the rules....."

6. The Court is of the view that the issue of maintainability being a legal issue, can be raised at anytime. If an alternate statutory remedy is prescribed, the petitioner would have to exhaust that remedy first. From the perusal of the aforesaid order, it is evident that it concerns the enquiry proceedings and does not relate to the challenge of the dismissal after consideration of the enquiry report. It is the petitioner's case that he was never in a managerial position and belonged to lowest rung of personnel in the bank. He had no authority to sanction any loans or over-drafts, for which he was charged and subsequently discharged from service. The learned counsel for the respondent also submits that the petitioner was never in any managerial position and, therefore, the case would not lie before this Court but under the I.D. Act because the petitioner will be covered under the definition of workman under Section 2(s) of the I.D. Act.

7. The petitioner relies upon three judgments that is: A.V. Venkateswaran, Collector of Customs, Bombay v. Ramchand Sobhraj Wadhwani & Anr., AIR 1961 SC 1506; judgment dated 18.04.2011 of the Supreme Court in Special Leave Petition (C) No. 18914/2010 titled: Union of India & Ors. v. Tania Construction Pvt. Ltd., and Harbanslal Sahnia & Anr. v. Indian Oil Corporation Ltd. & Ors., (2003) 2 SCC 107 to contend that where the writ petition seeks enforcement of any of the fundamental rights, or where there is a failure of principles of natural justice, or where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged, the plea of alternative remedy would not be a ground for disposal of the writ petition.

8. The Court is of the view that the A.V. Venkateswaran case related to import of Sheaffer pens from Australia and proceedings were initiated under the Indian Tariff Act, 1934. The second case cited i.e. Union of India & Ors. v. Tania Construction Pvt. Ltd., related to arbitration where the parties had approached the Court directly instead of resorting to arbitration proceedings. The third case cited by the petitioner i.e. Harbanslal Sahnia & Anr. v. Indian Oil Corporation Ltd. related to termination of dealership i.e. business relations of the petitioner and the respondent corporation. Each of the aforesaid cases related to business transactions and not to the rights of a workman. For a workman to seek protection of his rights, the I.D. Act provides a framework which will have to be adhered to. The aforesaid judgments are distinguishable and are not applicable to this case.

9. The Court is of the view that the lis raised by the petitioner, a workman, will have to be adjudicated by the Industrial Tribunal concerned. Accordingly, upon the petitioner raising a dispute, within one month from today, the Government shall refer the same within two weeks thereafter to the relevant Industrial Tribunal. The latter upon receiving the reference will endeavour to adjudicate

upon the same within a period not exceeding six months. The learned counsel for the respondent submits that no adjournment will be sought by the bank on any occasion so that the issue, which is pending for the last over 14 years, is adjudicated within the time indicated by the Court. In view of the pendency of the writ petition and the issue of maintainability being raised for the first time today, the delay in preferring the industrial dispute stands condoned.

10. With the aforesaid directions, the petition stands disposed off.

11. Dasti.